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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 305

[Docket No. APHIS-2012-0089]

Cold Treatment for Fresh Fruits and Vegetables; MidAmerica St. Louis Airport, Mascoutah, IL

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to allow, under certain conditions, the cold treatment of imported fruits and vegetables upon arrival at the MidAmerica St. Louis Airport, Mascoutah, IL. We have determined that there are biological barriers at this port that, along with certain safeguards, would prevent the introduction of fruit flies and other insect pests into the United States in the unlikely event that they escape from shipments of fruits or vegetables before the fruits or vegetables undergo cold treatment. This action will facilitate the importation of fruit requiring cold treatment while continuing to provide protection against the introduction of fruit flies and other insect pests into the United States.

EFFECTIVE DATE: [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. S. Gadh, Senior Risk Manager—Treatments, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2018.

## SUPPLEMENTARY INFORMATION:

### Background

The phytosanitary treatments regulations in 7 CFR part 305 set out general requirements for certifying or approving treatment facilities and for performing treatments listed in the Plant Protection and Quarantine (PPQ) Treatment Manual<sup>1</sup> for fruits, vegetables, and other articles to prevent the introduction or dissemination of plant pests or noxious weeds into or through the United States. Within part 305, § 305.6 (referred to below as the regulations) sets out requirements for treatment procedures, monitoring, facilities, and enclosures needed for performing sustained refrigeration (cold treatment) sufficient to kill certain insect pests associated with imported fruits and vegetables and with regulated articles moved interstate from quarantined areas within the United States.

Most imported fruits or vegetables that require cold treatment undergo that treatment while in transit to the United States. However, the Animal and Plant Health Inspection Service (APHIS) also allows imported fruits or vegetables to undergo cold treatment at an approved cold treatment facility in either the country of origin or after arrival in the United States at a cold storage warehouse approved by the APHIS Administrator.

In § 305.6, paragraph (b) limits cold treatment facilities to those cold storage warehouses approved by the Administrator and located in the area north of 39° latitude and east of 104° longitude, or under special conditions at one of the following ports, which are outside the geographic area stipulated in the regulations: The maritime ports of Wilmington, NC; Seattle, WA; Corpus Christi, TX; and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA;

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<sup>1</sup> The PPQ Treatment Manual is available at [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/treatment.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf).

and Hartsfield-Atlanta International Airport, Atlanta, GA. The location restrictions serve as an additional safeguard against the possibility that fruit flies or other pests could escape from imported articles prior to treatment and become established in the United States.

As stated previously, the regulations do allow cold treatment facilities to be located outside the geographical area stipulated by the regulations. In order to approve those locations, APHIS conducts site-specific evaluations and determines whether regulated articles can be safely transported to cold treatment facilities under special conditions to mitigate the possible escape of pests of concern.

On May 13, 2013, we published in the Federal Register (78 FR 27864-27866, Docket No. APHIS-2012-0089) a proposal<sup>2</sup> to amend the regulations by adding the MidAmerica St. Louis Airport, Mascoutah, IL, to the list of ports that are designated as approved locations for cold treatment of imported fruits or vegetables. This proposal was based on our determination that there are biological barriers in the area of this port that, along with certain safeguards, would prevent the introduction of fruit flies and other insect pests in the unlikely event that they escape from shipments of fruits or vegetables before the fruits or vegetables undergo cold treatment.

We solicited comments concerning our proposal for 60 days ending July 12, 2013. We received one comment by that date from a private individual, which supported the proposed action. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

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<sup>2</sup> To view the proposed rule and the comment we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0089>.

This final rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

This final rule will amend the regulations to allow a new cold treatment facility to be located at MidAmerica St. Louis Airport, Mascoutah, IL. The facility is expected to be used mainly to treat imported blueberries. While most if not all blueberry farms in the United States are small entities, the final rule will not significantly affect the market for blueberries because the facility is not projected to result in a significant increase in the quantity of blueberries imported by the United States. The United States is the world's largest producer of blueberries and U.S. blueberry exports exceed imports four-fold.

The cold treatment facility will benefit the MidAmerica St. Louis Airport and the local economy. The facility is expected to result in at least 800 flights of produce requiring cold treatment per year, raising at least \$8 million in direct income for the airport. MidAmerica St. Louis Airport is classified as a small entity for which the small-entity standard is annual revenue of not more than \$30 million.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

## Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

## Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

## List of Subjects in 7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 7 CFR part 305 as follows:

## PART 305--PHYTOSANITARY TREATMENTS

1. The authority citation for part 305 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 305.6 is amended as follows:

a. In paragraph (b), by adding the words “MidAmerica St. Louis Airport, Mascoutah, IL;” after the words “Seattle-Tacoma International Airport, Seattle, WA;” and

b. By adding a new paragraph (h)(5) to read as set forth below.

§ 305.6 Cold treatment requirements.

\* \* \* \* \*

(h) \* \* \*

(5) Airport of Mascoutah, IL. Consignments of fruits or vegetables arriving at the MidAmerica St. Louis Airport, Mascoutah, IL, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) Bulk and containerized consignments of fruits or vegetables arriving for cold treatment must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(ii) APHIS will evaluate facility safeguards in light of the plant health risks involved and approve the operation of a facility in that location subject to the following conditions to be agreed upon by the involved parties and included in the compliance agreement required in § 305.6(f):

(A) The facility will only be certified if the Administrator determines that the regulated articles could be safely transported to the facility from the point of entry or origin without significant risk that plant pests will escape in transit to the facility or while the regulated articles are at the facility.

(B) Bulk consignments (those consignments which are stowed and unloaded by the case or bin) of fruit must arrive in pest-proof packaging that prevents the escape of the pests of concern.

(C) The facility must ensure that the pest-proof cartons are off-loaded from containers in a safeguarded environment and at no time are the articles to be removed from the cartons prior to treatment.

(D) Arrangements for treatment must be made before the departure of a consignment from its port of entry or points of origin in the United States. The cold treatment facility and APHIS must agree in advance on the route by which consignments are allowed to move between the aircraft on which they arrived at the airport and the cold treatment facility. The movement of consignments from aircraft to a cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(E) The facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruits or vegetables.

(F) The facility must maintain physical separation of treated articles from untreated articles and apply all required safeguards (e.g., larger consignments are broken up into smaller boxes following treatment and those treated articles are required to be packaged in pest-proof containers per an agreement between the treatment facility and the importer) before releasing to local markets or for movement to other States.

Done in Washington, DC, this 18<sup>th</sup> day of October 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013-25005 Filed 10/23/2013 at 8:45 am; Publication Date: 10/24/2013]